

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC REAL ESTATE COMMISSION

RULE CITATION: 21 NCAC 58A .0110

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

It is unclear what if any difference there is between an "office" and a "principal office." Those terms, along with "branch office" are used throughout this rule. Since a branch office meets the definition of "office" it is unclear how to determine which of multiple firm offices would be the principal office.

In (b) it is not clear how many "brokers-in-charge" there may or must be for an office which is shared by more than one firm.

In lines 14 and 15 the rule provides that in an office space shared by more than one firm "one broker may serve as broker-in-charge of each firm." I believe that in the context in which it is written it means that one broker shall serve as the broker-in-charge for all the firms occupying the space. I realize the rule states "may" but it goes on to add as part of that sentence that "all firms at that location shall maintain ... the same delivery address as that of the designated broker-in-charge" (emphasis added). If there is more than one broker-in-charge in that location who or how is "the" broker-in-charge determined? [If the rule means to state that there is only one broker-in-charge in an office with multiple firms, I believe it would be clear if it stated that one person serves "for all the firms," rather than "each firm" at that location.]

However the rule is open to – in fact requires – the interpretation that each firm can designate its own broker-in-charge. Now, whether that is permitted under this rule is unclear. By stating that one broker “may” serve for each firm (meaning all the firms) that implies that each firm would also be allowed to have its own broker-in-charge. If there is more than one broker-in-charge in that location it is unclear who is “the” designated or how “the” designated broker-in-charge is determined?

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AGENCY: NC REAL ESTATE COMMISSION

RULE CITATION: 21 NCAC 58A .1402

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

In both (a) and (b) there are discretionary actions that the Real Estate Commission may take. In neither case are there any standards set for when the discretionary authority shall or shall not be exercised so therefore it is unclear what those standards are. There is no authority cited to set those standards outside the rule.